

**Introduced by Senator Ashburn**

February 21, 2003

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An act to add Section 7630.5 to, and to add Article 1.5 (commencing with Section 7645) to Chapter 4 of Part 3 of Division 12 of, the Family Code, relating to paternity testing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1030, as amended, Ashburn. Paternity testing.

(1) Existing law provides that a child, the child's natural mother, or a man presumed to be the child's father, among other specified persons, may bring an action to determine the existence or nonexistence of the father and child relationship, as specified.

This bill would require any person that brings an action to establish paternity pursuant to a specified provision to make specified allegations in a verified complaint.

(2) Existing law authorizes a local child support agency to issue an administrative order requiring the mother, the child, and the alleged father to submit to genetic testing to determine paternity in any civil action or proceeding in which paternity is a relevant fact and a contested issue.

This bill would set forth procedures whereby certain persons may move to set aside a default judgment establishing paternity entered by a court of this state, as specified.

(3) Existing law authorizes a party in a civil action to make a motion to vacate a judgment within a specified period of time.

This bill would permit the court to grant those motions if certain conditions are satisfied, as specified, and would require court-ordered

genetic testing, if requested by an authorized person or the court. Regardless of those test results, the bill would confer upon the court the discretion to deny a motion, if in the best interest of the child after consideration of specified factors. ~~The bill would permit a previously established father, or another specified person, who is not the biological father of a child to bring a civil action against the mother of the child for damages, as specified.~~ The bill would not apply to any adoption case or to any paternity case relating to a child conceived by artificial insemination.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) DNA genetic testing is recognized as scientifically valid by  
4 the courts of this country.

5 (b) In the year 2000, the State of California recognized the  
6 validity of DNA testing and created a procedure for an individual  
7 convicted of certain crimes to petition a court to reopen his or her  
8 case.

9 (c) A man who is adjudicated to be the father of a child by a  
10 court in a paternity action when he is not actually the biological  
11 father of the child may be financially liable for up to 19 years of  
12 child support.

13 (d) The American Association of Blood Banks reported that  
14 out of a total of more than 280,000 cases evaluated in 1999, almost  
15 30 percent excluded the tested individual as the biological father.

16 (e) A growing number of states now have antifraud paternity  
17 statutes which permit an individual previously adjudicated to be  
18 the father of a child to reopen his case and present or obtain DNA  
19 testing if he believes he may have been erroneously identified as  
20 the father.

21 (f) Respect for the judicial system is greatly diminished when  
22 the laws do not permit the correction of an injustice.

23 For these reasons, it is the intent of the Legislature to enact the  
24 Paternity Justice Act, as set forth in this act.

25 SEC. 2. Section 7630.5 is added to the Family Code, to read:



1 7630.5. Any person who brings an action to establish  
2 paternity of a child pursuant to Section 7630 shall allege in a  
3 verified complaint one of the following:

4 (a) The alleged putative father is the only possible father.

5 (b) Someone other than the putative father may be the  
6 biological father of the child.

7 (c) It is unknown whether someone other than the putative  
8 father may be the biological father of the child.

9 SEC. 3. Article 1.5 (commencing with Section 7645) is added  
10 to Chapter 4 of Part 3 of Division 12 of the Family Code, to read:

11  
12 Article 1.5. Setting Aside Default Judgment of Paternity  
13

14 7645. This article shall be known and may be cited as the  
15 Default Paternity Justice Act.

16 7645.1. For purposes of this article, the following definitions  
17 shall apply:

18 (a) “Child” means the child of a previously established father,  
19 as determined by the superior court in a judgment that is the subject  
20 of a motion brought pursuant to this article, or as a matter of law.

21 (b) “Judgment” means a judgment, order, or decree entered in  
22 a court of this state that establishes paternity. For purposes of this  
23 article, “judgment” does not include a judgment in any action for  
24 marital dissolution, legal separation, or nullity.

25 (c) “Previously established father” means a person identified  
26 as the father of a child in a default judgment issued by the superior  
27 court in which the issue of paternity was determined.

28 (d) “Previously established mother” means a person identified  
29 as the mother of a child in a default judgment issued by the superior  
30 court that is the subject of a motion brought pursuant to this article.

31 7646. (a) Notwithstanding any other provision of law, a  
32 default judgment establishing paternity may be set aside upon a  
33 motion by the previously established mother of a child, the  
34 previously established father of a child, the child, or the legal  
35 representative of any of these persons if genetic testing indicates  
36 that the previously established father of a child is not the biological  
37 father of the child. The motion shall be brought within either of the  
38 following time periods:

1 (1) Within a two-year period commencing with the service of  
2 an order pursuant to Section 5233 on the employer of a previously  
3 established father.

4 (2) In the case of any previously established father who is  
5 subject to an earnings assignment order as of the effective date of  
6 this section, within a two-year period commencing with the  
7 enactment of this section.

8 (b) Subdivision (a) does not apply if the child is presumed to  
9 be a child of a marriage pursuant to Section 7540.

10 7647. (a) A court may grant a motion to set aside a default  
11 judgment establishing paternity only if all of the following  
12 conditions are met:

13 (1) The motion is filed in a court of proper venue.

14 (2) The motion contains, at a minimum, all of the following  
15 information, if known:

16 (A) The legal name, age, county of residence, and residence  
17 address of the child.

18 (B) The names, mailing addresses, and counties of residence,  
19 or, if deceased, the date and place of death, of the following  
20 persons:

21 (i) The previously established father and the previously  
22 established mother, and the biological mother and father of the  
23 child.

24 (ii) The guardian of the child, if any.

25 (iii) Any person who has physical custody of the child.

26 (iv) The guardian ad litem of the child, as appointed pursuant  
27 to Section 7647.5.

28 (C) A declaration that the person filing the motion believes that  
29 the previously established father is not the biological father of the  
30 child, the specific reasons for this belief, and a declaration that the  
31 person desires that the motion be granted. The moving party is not  
32 required to present evidence of a paternity test indicating that the  
33 previously established father is not the biological father of the  
34 child in order to bring this motion pursuant to Section 7646.

35 (D) A declaration that the marital presumption set forth in  
36 Section 7540 does not apply.

37 (3) The court finds that the conclusions of the expert, as  
38 described in Section 7552, and as supported by the evidence, are  
39 that the previously established father is not the biological father of  
40 the child.

(b) The motion shall include a proof of service upon the following persons, excluding the person bringing the motion:

(1) The previously established mother.

(2) The previously established father.

(3) The local child support agency, if services are being provided to the child pursuant to Title IV-D or IV-E of the Social Security Act (42 U.S.C. ~~Sec. 301 et seq.~~ *Secs. 651 et seq. and 670 et seq., respectively*).

7647.5. A guardian ad litem may be appointed for the child to represent the best interests of the child in an action brought pursuant to this article.

7647.7. Any genetic testing used to support the motion to set aside shall be conducted in accordance with Section 7552. The court shall, at the request of any person authorized to make a motion pursuant to this article, or may upon its own motion, order genetic testing to assist the court in making a determination whether the previously established father is the biological father of the child.

7648. If the court finds that the conclusions of all of the experts, based upon the results of genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) of Part 2, indicate that the previously established father is not the biological father of the child, the court may, nevertheless, deny the motion if it determines that denial of the motion is in the best interest of the child, after consideration of the following factors:

(a) The nature, duration, and quality of any relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship.

(b) The request of the previously established father that the parent-child relationship continue.

(c) The benefit or detriment to the child in establishing the biological parentage of the child for medical reasons.

(d) Whether the previously established father was led to believe he was the biological father due to fraud or deceit by the mother or lack of knowledge regarding genetic testing.

(e) Whether the conduct of the previously established father has impaired the ability to ascertain the identity of or get support from the biological father.

1 7648.1. If the court denies a motion pursuant to Section 7648,  
2 the court shall state on the record the basis for the denial of that  
3 motion and any supporting facts.

4 7648.2. (a) When the local child support agency participates  
5 in a proceeding under this article, it may obtain an administrative  
6 order for genetic tests as described in Section 7558.

7 (b) Except when ordered by a court, the local child support  
8 agency is not responsible for the costs of genetic testing when  
9 performed in connection with a proceeding under this article, nor  
10 is the local child support agency required to provide for, or assist  
11 in, genetic testing in any case in which it is not providing services  
12 under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et  
13 seq.).

14 7648.3. A court may not issue an order setting aside a default  
15 judgment establishing paternity pursuant to this article under any  
16 of the following circumstances:

17 (a) The judgment was made or entered by a tribunal of another  
18 state, even if the enforcement of that judgment is sought in this  
19 state.

20 (b) The judgment was made or entered in this state and genetic  
21 tests were conducted prior to the entry of the default judgment  
22 which did not exclude the previously established father as the  
23 biological father of the child.

24 7648.4. Notwithstanding any other provision of law, if the  
25 court grants a motion to set aside a paternity judgment pursuant to  
26 this article, the court shall vacate any order for child support and  
27 arrearages issued on the basis of that previous judgment of  
28 paternity.

29 ~~7648.7. (a) Pursuant to Section 7551, a previously~~  
30 ~~established father, as defined in Section 7645.1, or any man~~  
31 ~~established as a father through presumption, pursuant to Sections~~  
32 ~~7611 and 7612, who is not the biological father of a child, may~~  
33 ~~bring a civil action against the mother of the child on or after the~~  
34 ~~date on which the child attains the age of 18 years in the case of~~  
35 ~~fraud committed by the mother that resulted in a default judgment~~  
36 ~~establishing paternity in any court of competent jurisdiction for~~  
37 ~~any of the following:~~

38 ~~(a) Reimbursement for any amount paid under any judgment of~~  
39 ~~paternity for that child, including interest paid.~~

1 ~~(b) The costs of any action taken pursuant to this article or~~  
2 ~~Section 7551 together with reasonable attorney's fees.~~

3 ~~(c) All future amounts owed under a judgment of paternity,~~  
4 ~~including interest owed, if a motion to set aside that judgment is~~  
5 ~~denied, or if the moving party was denied relief from any paternity~~  
6 ~~judgment pursuant to Section 7646 or any other law.~~

7 7648.8. This article does not establish a basis for termination  
8 of any adoption, and does not affect any obligation of an adoptive  
9 parent to an adoptive child.

10 7648.9. This article does not establish a basis for setting aside  
11 a judgment establishing paternity with regard to a child conceived  
12 by artificial insemination pursuant to Section 7613.

